

1 GARY M. RESTAINO
2 United States Attorney
3 District of Arizona

4 KEVIN M. RAPP
5 Arizona Bar No. 014249
6 Kevin.Rapp@usdoj.gov
7 COLEEN P. SCHOCH
8 Georgia State Bar No. 366545
9 Coleen.Schoch@usdoj.gov
10 Assistant U.S. Attorneys
11 Two Renaissance Square
12 40 N. Central Ave., Suite 1200
13 Phoenix, Arizona 85004
14 Telephone: 602-514-7500
15 *Attorneys for Plaintiff*

16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

19 United States of America,
20
21 Plaintiff,
22 vs.
23 David Allen Harbour,
24 Defendant.

No. CR-19-00898-PHX-DLR

**JOINT SUPPLEMENTAL
PROPOSED MODIFIED
JURY INSTRUCTION 2.5**

25 The parties respectfully submit the following proposed modified supplemental Jury
26 Instruction 2.5:

2.5 Deposition as Substantive Evidence

27 A deposition is the sworn testimony of a witness taken before trial. The witness is
28 placed under oath to tell the truth and lawyers for each party may ask questions. The
questions and answers are recorded.

The deposition of Defendant, David Harbour, which was taken on April 7, 2019, is
about to be presented to you. You should consider deposition testimony in the same way
that you consider the testimony of the witnesses who have appeared before you. Do not
place any significance on the behavior or tone of voice of any person reading the questions
or answers.

Comment

Use this instruction only when the court concludes that testimony by deposition may be received as substantive evidence in light of the rules of evidence and the defendant's confrontation rights. The Committee recommends that it be given immediately before a deposition is read. The bracketed last sentence of the instruction would not be used when the deposition is presented by video or audio recording.

See Fed. R. Crim. P. 15.

Revised Dec. 2017

2.5 Deposition as Substantive Evidence

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of Defendant, David Harbour, which was taken on July 23, 2019, is about to be presented to you. You should consider deposition testimony in the same way that you consider the testimony of the witnesses who have appeared before you. Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

Comment

Use this instruction only when the court concludes that testimony by deposition may be received as substantive evidence in light of the rules of evidence and the defendant's confrontation rights. The Committee recommends that it be given immediately before a deposition is read. The bracketed last sentence of the instruction would not be used when the deposition is presented by video or audio recording.

See Fed. R. Crim. P. 15.

Revised Dec. 2017

Respectfully submitted this 8th day of February, 2023.

GARY M. RESTAINO
United States Attorney
District of Arizona

s/ Kevin M. Rapp
KEVIN M. RAPP
COLEEN P. SCHOCH
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants

s/Daniel Parke
U.S. Attorney's Office